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DEVELOPMENT  
CITY OF NEWPORT BEACH

To The Planning Commission  
Newport Beach

Project file No PA2010-114

Regarding Marina's Pointe  
Substantial Conformance Review

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June 7, 2012

Via Facsimile and Hand Delivery

Michael Toerge, Chairman  
Members of the Planning Commission  
City of Newport Beach  
3300 Newport Blvd.  
Newport Beach, California 92663

Re: Mariner's Pointe - (PA2010-114) 100 - 300 West Coast Highway; Architectural and Landscape Review; Substantial Conformance Review

Dear Chairman Toerge and Members of the Planning Commission:

Thank you for the opportunity to comment on the captioned Project and on the captioned review of the Project. My name is Cameron Merage, and I own the property at 100 Kings Place, Newport Beach, which lies on the bluff top directly above the captioned Project. During the administrative review and hearing on the captioned Project, I provided comments to the City Council. Attached hereto as Exhibit "A" is a copy of those comments that I incorporate herein.

At the outset, I note that, although the captioned Project has been approved, many of our earlier concerns have not been addressed. The new plans provided by the Applicant fail to comply with the approved Project and exacerbate the impacts of the approved Project on the neighborhood including my property. The revised Project will have significant impacts on my plans for this wonderful site which overlooks the Newport Bay. It will also have significant impacts on the entire neighborhood of Kings Road and Kings Place. None of these impacts have been properly analyzed. Moreover, the new plans conflict with the approved plans and are not in compliance, let alone substantial compliance, with the approved plans.

**I. The Final Architectural Plans Conflict with the Approved Plans.**

As noted below and as noted in the Staff Report, the Final Architectural Plans are not consistent with the approved plans for the Project. Among other things, these Final Plans exceed the height of the permitted development and the approved plans. The Mitigated Negative Declaration ("MND") acknowledged a concern that building height might affect residences above the Project:

"Elevations of the proposed buildings and structures are shown in Figures 6a, 6b, and 6c. Figure 7 shows a cross-section of a portion of the project site. As shown in Figure 6a, Building Elevations - South, the proposed development would be two stories in height and include appropriately scaled framework of architectural and landscape architectural elements and design, including enhanced landscaping along its frontage and street edge and a water feature (see Figure 6a)." *Id.* at 52.

It continues:

"Adherence to the requirements/guidelines of Mariner's Mile Strategic Vision and Design Plan would ensure high quality site design, architecture, landscaping, and streetscapes within the project development and along the project frontage. Project



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design would also be subject to review by the City's Planning Commission. The proposed project would be compatible with the adjacent land uses and would not degrade the visual character of the site and surroundings. Impacts would be less than significant and no mitigation measures are necessary." Id. (Emphasis supplied.)

Although the MND concluded that the aesthetic impacts would be less than significant, the Final Architectural Plans create significant impacts because, in addition to the mass, various features of the building increase in height more than four (4') feet in close proximity with the above residences. As discussed below, the Final Architectural Plans conflict with the approved plans in six respects, five of which require an increase in height. With the Final Architectural Plans, the revised Project further degrades and threatens the visual character of the site and its surroundings.

Further, the Final Architectural Plans conflict with the findings in Resolution No. 2011-86. Finding C, which discusses the Project increased height notes that the Project will not affect residences above:

"With the exception of the tower elements and mechanical equipment enclosure, the height of the commercial building is 32 feet 4 inches. To minimize the visual height and bulk of the parking structure as viewed in perspective from West Coast Highway, the partial parking structure roof cover has been setback 37 feet 5 inches from the front edge of the structure." Resolution No. 2011-86, Finding C-1, page 14. Further, Finding C-2 provides:

"The homes on the residential lots to the north are situated at the top of the hillside that ranges in height from 40-50 feet above the project's pad elevation. The homes are also located a minimum of 60 feet back from the rear property line. These vertical and horizontal separations between the proposed commercial building and the homes at the top of the slope minimize the impact of the proposed structure heights to the adjacent residences." Resolution No. 2011-86, Finding C-2, page 14.

With the Final Architectural Plans, the Project will further impact the residences above. These Plans are not consistent with the approved plans.

The two towers that are increased in height by the Final Architectural Plans are 4 feet four inches and 1 foot 7 inches above the height of those towers in the approved plans. Please note that these two towers are directly between my property and the bay and significantly hinder my view. They of course also hinder the views of the other residences above the project. Also a third tower in the Final Architectural Plans has been raised by 1 foot 3 inches that affects all of our views but the tower appears to have little or no operational use. Also, please note the towers are now proposed to be substantially 40 feet in height. The Planning Commission Staff Report notes at Page 23, that residences above the project are "approximately 40-50 feet above the projects pad elevation.

The mechanical equipment enclosure located at the rear portion of the commercial building has dramatically increased in size over the approved plans and now includes metal grate panels instead of a solid roof. This increase in size affects all of the residences above the project. While a noise assessment was prepared, no such assessment was attempted for the odors



that will be created and experienced by the residences above the project particularly with the new graded panels that replace the roof. This enclosure will concentrate the fumes and odors of the entire structure and release them by the residences.

It appears that no consideration has been given to the effect on the residences above the project of sunlight/heat reflection and shadows resulting from the increased height of the towers and the dramatic enlargement of the mechanical equipment enclosure.

Moreover, as discussed below, the Final Landscaping Plans decrease the amount of landscaping by fully one-third (1/3). That is not consistent with the approved plans or the Mariner's Mile Strategic Vision and Design Framework.

## **II. The Final Landscaping Plans Conflict with the Approved Plans and the Mariner's Mile Strategic Vision and Design Framework.**

As noted above and in the Staff Report, the Final Landscaping Plans reduce the landscaping required by the approved plans by fully one-third (1/3). As the Staff Reports states:

**"The approved conceptual landscape plan (Attachment No. PC9) included extensive decorative paving, a 280-square-foot water feature, and approximately 3,700 square feet of planter area that included a variety of plant materials. The final proposed landscaping includes minor revisions. Overall planter area has been reduced from the approved conceptual plans to approximately 2,460 square feet due to increased decorative paving and an enlarged water feature area of 598 square feet."**Staff Report, page 5 (*Emphasis supplied*).

This reduction is significant for several reasons. First, as noted above, the MND relied on the extensive landscaping to soften the building mass. With landscaping reduced by one-third (1/3), the mass of the building will create an aesthetic impact. Second, the reduction of landscaping conflicts with the Mariner's Mile Strategic Vision and Design Framework. This Framework has stringent landscaping requirements for Mariner's Mile and for this site in particular.

For instance, the Framework requires:

**"Therefore, trees and shrubs at all sites in Mariner's Mile need to be coordinated to promote visual coherence and consistency and to hide the bumpers and tires of parked vehicles. Existing unused paved areas should be converted to planting areas.**

**"The creation of strong, coherent streetscapes, scaled appropriately to vehicular and pedestrian activities, land uses and planting conditions should be promoted over time to improve property values and boost the overall sense of place within Mariner's Mile."**

Mariner's Mile Strategic Vision and Design Framework, page 40.

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As I discussed in my original comments, the Project is massive and out of character with the neighborhood. Reducing the landscaping by thirty-three (33%) percent will exacerbate this impact.

Moreover, the Framework provides specific guidelines for the Project site. Section 3.8 requires that the landscaping at Dover Ave. and Pacific Coast Highway mirror that at the Arches Bridge. None of that occurs here. The reduction landscaping increases this conflict.

### **III. The Final Plans Do Not Comply with the Approved Plans and Must be Revised.**

As indicated above, the Final Architectural Plans and the revised Project conflicts with the approved plans in six respects. Five of these concern height:

- (1) The height of the primary elevator and stairwell tower (35' [flat roof] in the approved plans to 39' 4" [sloped roof] in the Final Architectural Plans);
- (2) The height of the tower feature within the main parking structure (38' 7" [sloped roof] in the approved plans to 39' 4" [sloped roof] in the Final Architectural Plans;
- (3) The height of the western corner tower element of the parking structure 37' [sloped roof] to 38' 3" [sloped roof];
- (4) A new 40' high mechanical equipment enclosure over the roof of the northwesterly corner of the parking structure;
- (5) The mechanical equipment enclosure located on the roof of the rear portion of the commercial building **has increased in size** to accommodate the installation of pollution control units to control odors and silencers to attenuate noise from the mechanical equipment

Each of these creates significant impacts to the neighborhood above especially to Mr. Merage's residence.

Any increase in height over the approved plans impacts the resident's above. As indicated above, the MND indicated that the Project would have no impacts based on the proposed and now approved plans. But the Final Architectural Plans create impacts to the residences on Kings Road and Kings Place including Mr. Merage's residence. All five of these will affect Mr. Merage's residence and will have significant aesthetic impacts.

Moreover, the mechanical equipment enclosure which has increased in size to house the pollution control devices will emit noise that was not analyzed in the MND. Mestre Greve's noise analysis cannot substitute for environmental review. This is a new Project feature which will have many impacts including aesthetics and noise, and the MND did not analyze it.

Further, assuming that the noise analysis is sufficient, the public has not had the statutory adequate time to review and analyze this noise analysis. The MND should have included this analysis: the fact that it did not means that the Project includes mitigation measures which will have impacts which were not analyzed in the MND. The California Environmental Quality Act, Public Resources



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Code sections 21000 et seq. requires that new mitigation measures which cause unanalyzed impacts require recirculation of the environmental document. Here, that is the MND.

As indicated above, the MND noted that the Project did not have aesthetic impacts due to its limited height and landscaping. Raising the building and the appurtenant features eliminate this advantage, is not in compliance with the approved plans, and creates significant aesthetic impacts. Indeed, mitigation measures inserted as part of the Project approval have the potential to create significant and unanalyzed impacts as demonstrated by the City's requirement of the Mestre Greve Noise Assessment require that the MND be revised and recirculated for public review and comment. The City's including this study without adequate and timely notice to the public cannot satisfy this statutory obligation.

The sixth change concerns the loss of parking. Parking at this site is at a premium. The valet parking plan will be difficult enough on this tight site. The elimination of any parking spaces will create significant circulation impacts, which must be analyzed. Indeed, the elimination of even seven parking spaces will affect the Project circulation but it will also affect circulation on Pacific Coast Highway when Project visitors back onto the roadway because parking spaces are not available.

#### **IV. Conclusion: the Final Plans Conflict with the Approved Plans and Must be Revised.**

As discussed above, the Final Plans change the Project and require environmental review. It is a new Project with a third less landscaping, several increases in height and the loss of premium parking spaces. We encourage you to find these plans not in compliance and reject the requested changes.

Also the community should be provided with another opportunity to comment on this project. Please note that the notice for this meeting appears to indicate that the Planning Commission has already made its determination regarding this matter. The notice states that the building designs to be reviewed "include minor increases in height" (underlining added) and "all significant environmental concerns for the proposed project have been addressed..." This notice leads interested residents to believe that attendance at the meeting is unnecessary and would be ineffective because there is nothing to comment on and nothing for the Planning Commission to consider. In the circumstances the notice misleads interested residents and fails to provide the required notice. I have attached the comments of a Newport Beach Architect, Masum Azizi as Exhibit "B" of Azizi, Architects, Inc.

Please provide me with all notices in connection with the Project and the captioned Application including notices of public hearings, notices of determination, if any, and notices of approvals if any.

Thank you for your anticipated cooperation in this matter. Should you have any questions, please do not hesitate to contact me.

Sincerely,



Cameron Merage

cc: Leilani Brown, City Clerk

**EXHIBIT A**



August 9, 2011

The Honorable Mayor Michael Henn and Respected Council Members  
City of Newport Beach  
3300 Newport Blvd.  
Newport Beach, CA 92658-8915

Subject: Comments on the Initial Study  
Mariner's Pointe, West Coast Highway at Dover Drive  
Newport Beach, California


The Honorable Mayor,

Attached is our letter of comments that we have presented to the Planning Commission on June 23, 2011.

First of all I sincerely commend the Planning Commission Members for reviewing and addressing all parties' concerns to the above referenced development. I believe they all understood the magnitude of the negative impacts that this development would inflict upon the neighboring properties and the community at large. As a result, with thorough consideration of all issues, they came up with excellent findings to avoid excessive negative impacts from this project and denied all the requested variances. I trust that Your Honor and the Council Members will give this development a thorough review as well.

As I stated in my letter as well as before the Planning Commission, the project could be beneficial for the City and will have lesser negative impacts if it is implemented within the allowed provisions of the zoning ordinance. I understand this is why we have these codes and regulations so that developments don't get out of hand, ignoring the general public welfare and environmental impacts for self interest and greed. However, along with my neighbors and with the assistance of professional architects and engineers, we have determined that this development as proposed with all the horizontal and vertical increases will undoubtedly increase the negative impacts on our properties as outlined in my letter.

Regretfully, I am deeply concerned and disappointed that the City Planning Staff have supported and approved such a project with unreasonable variances on a very small parcel of land. I share their reasoning that the City's goal is to improve the Mariner's Mile Corridor to redevelop the current dilapidated property. However, this must not be accomplished on the expense of inflicting increased negative impacts to the neighboring properties. Further, the Initial Study under CEQA did not address some of the issues such as shadow and noise level correctly. This was evident during the last public hearing when the environmental consultant did not even realize that the proposed development could actually have a shadow on my property as well as my neighbors' properties because we





are immediately north of this development. In addition, the Staff approved this project despite too many unknowns and assumptions as documented in their finding with a lot of "If's." I do not believe this is how the intent of the law and regulations should be implemented

I urge the City Council to review this project as thoroughly as the Planning Commission has done, for which we are very grateful for. We trust that with all issues considered, this development's variances could all be justifiably denied as it was unanimously done so by the Planning Commission.

Rest assured it is obvious that the negative impacts of this development's increases are significant and very serious for myself as well as my neighbors. We shall pursue all possible legal avenues individually as well as collectively to protect our interest.

For your consideration, our chronological responses to the Response to Comments are as follows:

R2-1 Page 3-37:

The mass of roof structure higher than the allowed height and 5 foot closer than the allowed set back is still in front of my property and will be blocking the view of open space, which is a negative impact. Adding a partial roof top structure may screen some vehicles, but it will increase building height and subsequently create more shadow on to my property. This is again a partial structure and will not block airborne noise. These are negative impacts.

R2-2 Page 3-37:

The partial roof top structure (although may screen a few roof top parking cars and lights), however as a flat roof with unpleasant looking roofing material without any architectural details about 35 feet above the street level and 5 feet closer to my property will bring the sun light/heat reflection from the roof on to my property and this is a negative impact.

In regards to the restaurant odors, you may walk by any restaurant in Newport Beach and realize that you can not argue that the various smell of a commercial Kitchen would not be a concern next a residential neighborhood.

R2-4 Page 3-38:

It seems like the environmental study including its response to comments has failed again to understand the sun movement and its changing angle throughout the year. If you look into a model of this condition: any object on an average throughout the year, will put equal to half of its height as shadow to its north side. In this case on an average about 20 feet of my property will be in the shadow of this building. This is a negative impact.

## R2-5 Page 3-38:

The swale is designed to protect the proposed development from the running rainwater from the slopes; however, it reduces 3 feet width of my property for the entire length (110 feet) about 330 sq.ft. This is a negative impact.

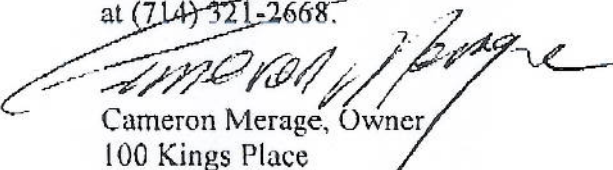
## R2-6 Page 3-38:

The airborne noise from the Mechanical room through its southward openings and roof top parking is a serious concern as it is brought 5 feet closer both vertically and horizontally to my property. The partial roof top structure is for screening supposedly and not for sound isolation.

## R2-6 Page 3-38:

Adding a partial roof top structure has introduced new increased negative impacts as addressed above such as shadow and aesthetic problems.

I appreciate your consideration of the above. If you have any questions, you can reach me at (714) 321-2668.



Cameron Merage, Owner  
100 Kings Place  
Newport Beach, CA 92663



## **EXHIBIT B**

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**FW: 1114-CR**

1 message

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Masum Aziz <masum@a-architects.com>

To: cameronmerage@firstteam.com, cameronmerage@yahoo.com

Cc: Amii Kresher <amiikresher@firstteam.com>, Vanessa Yee <vanessa@a-architects.com>

Thu, Jun 7, 2012 at 10:02 AM

Cameron,

Attached is the draft of my comments. Vanessa is proofreading this and hopefully will forward an updated copy for your use. Meanwhile, you could use this as needed.

Regards,

Masum



## Comments on the Latest Drawings

Subject: Mariner's Pointe, West Coast Highway at Dover Drive  
Newport Beach, California

Cameron,

Per your request, I reviewed briefly some of the latest drawings of the subject project under the Planning Commissioner's Agenda. Below is some of the concerns:

1. They have added Grating Cover over their mechanical enclosure (meaning it is now mostly open to the sky). Under the initial approved plans, they had a roof over this area and louvered openings were on the west wall. Now with the grating cover instead of a roof, they have opened the mechanical equipment more to your side of the property. This will severely increase the noise level from the mechanical equipment as well as the fumes and odors of this entire structure which is adjacent to your property.
2. They have increased the parking structure mass and height to 35' by putting a roof over the entire parking structure. Under the initial approved plans, they had a roof top parking with a canopy only over the northern portion of the building.
3. They have added a Garage Exhaust Duct Enclosure on the North-West corner of the parking structure up to 40' high. This enclosure also includes a mechanical fan that ventilates the three parking garage levels [containing cars gas-fumes and odors of Trash Room (on the ground level of parking garage)] and dumps it in front of the residential properties on the north side including your property. In addition this mechanical fan would have a significant noise impact as well. Further, the concentration of contaminated air from the parking structure closer to your property now would make your living environment unhealthy. This is a major concern.

In addition to the negative impacts of this project as you have outlined before in your letter to the city of Newport Beach, the above increases only added severe impacts to the quality of air, health, noise and aesthetics for the properties on its north side in particular.